IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 18901 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANANT S.DAVE

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JYOTIBEN WD/O.RAMESHBHAI MORARBHAI KOLI PATEL - Petitioner(s)

Versus

THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mrs. Hansa B. Punani, ld. A.G.P. for for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE ANANT S.DAVE

Date : 25/10/2005

ORAL JUDGMENT

1. In this petition under Article 226 of the Constitution of India the petitioner detenue has challenged the detention order dated 22.06.2005 rendered by the respondent no. 2 in exercise of powers under Section 3(2)

under the provisions of Gujarat Prevention of Antisocial Activities Act, 1985 (for short the 'PASA Act').

2. The grounds on which the impugned order of detention is passed have been supplied to the petitioner detenue also. The grounds of detention reveal that there is solitary offence registered against the detenue vide C.R.No.457/05 with Jalalpor Police Station on 22.05.2005 for the offences punishable under Sections 66(1) (b), 65(a)(e), 81 and 116(2) of the Bombay Prohibition Act. The detaining authority has also considered about the statements of two witnesses dated 22.05.2005, 23.05.2005 and 24.05.2005 stating about the bootlegging activities of the detenue. After recording the inadequacy and in-effectiveness of the remedies under ordinary law, the detaining authority has also noticed that such activities of the detenue are

prejudicial to the maintenance of the public order and therefore, the powers under the act have been exercised.

3. Learned advocate for the petitioner has challenged the order of detention on the ground that being solitary offence, the activities as alleged, atmost may according to the petitioner as bootlegger but same has no nexus with the disturbance of the public order no materials have been placed by the detaining authority so as to arrive at the subjective satisfaction that the activities of the detenue disturbing the even tempo of public life. He placed reliance on unreported decision dated 10.03.1997 rendered in Special Civil Application No.10166 of 1996 and submitted that even a seizure of less quantity of liquor by itself do not lead to disturbance of the public order, and therefore, the order of detention is quashed

and set aside.

4. Learned A.G.P. Mrs. Hansa B. Punani has tried to justify the order of detention on the ground that the registration of crime against the detenue is relevant material and in given case, even registration of solitary offence may lead to disturbance of public order and therefore, she has submitted that this is not a case where the power under Article 226 of the Constitution of India requires to be exercised.

5. Having considered the rival submissions, perused the relevant records of the case, it is evident that in the facts of the present case, there is no material, except registration of solitary offence relied upon by the detaining authority and the statements of witnesses which indicate about threatening and beating up the witnesses, such activities

utmost is a question of law and order and not of disturbance of public order. The reliance placed by the learned advocate of the petitioner in the above decision, almost in similar nature of facts, the learned Single Judge after relying upon the decision of Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta, C.P. Reported in 1995 (2) G.L.R. 1268 and other cases including the Piyush Kantilal Mehta Vs. Commissioner of Police AIR 1989 (SC) found that the detenue could not have been detained as Bootlegger within meaning of Section 2(b) of the PASA Act since there was no case made out for disturbance of the public order.

6. In the present case the reliance is only placed upon the solitary offence, without having any basis and dehors the relevant and credible materials to arrive at a conclusion about disturbance of public order by the

prejudicial activities of the detenue and therefore, powers exercised by the authority while passing the order of detention is the result of non-application and the order of detention requires to be quashed and set aside.

7. For the reasons recorded hereinabove, the order of detention dated 22.06.2005 passed by the respondent no.2, is hereby quashed and set aside. The detenue Jyotiben Wd/o. Rameshbhai Morarbhai Koli Patel is ordered to be set at liberty forthwith if she is not required further in any other case by any other authority.

8. Rule is made absolute accordingly. Direct Service is permitted.

(ANANT S. DAVE, J.)

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